

## Criminal Law - Fraudulent Claim of Citizenship as a Criminal Offense

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**Criminal Law — Fraudulent Claim of Citizenship as a Criminal Offense**

—An alien seeking employment with a company engaged in war work, in answer to a question as to where he was born, replied, "Chicago, Illinois." He was indicted for "falsely and wilfully misrepresenting himself to be a United States citizen"<sup>1</sup> with the fraudulent purpose of securing, as such citizen, employment in a war plant. *Held*: The defendant's answer was not a sufficient misrepresentation to sustain the conviction. *United States v. Weber*, 185 F. (2d) 479, (11th cir., 1950).

The statute in the case noted,<sup>2</sup> making a false and wilful misrepresentation of citizenship a felony, has existed in the law since 1870.<sup>3</sup> It was originally passed as part of a comprehensive plan regulating the conduct of aliens, and made it a misdemeanor for any person not duly admitted to citizenship, for any fraudulent purpose whatever, to represent himself as a citizen of the United States. There apparently were no reported cases involving this original act. In 1940, Congress increased the penalties and changed the wording slightly, "to extend the coverage in view of the impending war."<sup>4</sup> As amended, the first convictions under the statute were reported.<sup>5</sup> Subsequently, in 1948, Congress evidently believing the crisis over, lowered the penalties and substituted the word "wilfully" in place of "knowingly." However, this change has not seemed to have slowed down the pace of convictions, and may even prove the opposite effect by making juries more willing to convict in view of the relatively less severe penalties.

As written and if broadly construed, the law makes a simple false claim to citizenship a crime, and it has been held to be within the power of Congress to do so.<sup>6</sup> However, in view of the severe penalties, the courts have not assumed that Congress intended such penalties were intended for words spoken in jest or boast, as the use of the word "falsely" particularly in a criminal statute suggests something more than a mere untruth. For that reason, the courts have, by interpretation, made the requirement for a fraudulent purpose an essential ingredient of the crime.<sup>7</sup> Judicial construction has also limited the application of the statute to those situations where some right to inquire exists or the person inquiring has a good and sufficient reason for learning the citizenship of the person asked.<sup>8</sup>

There are two problems that have arisen in view of this judicial construction:

<sup>1</sup> 62 Stat. 742 (1948), 18 U.S.C. §911 (1946), "Whoever falsely and wilfully misrepresents himself to be a citizen of the United States shall be fined not more than \$1000 or imprisoned not more than 3 years or both."

<sup>2</sup> *Supra*, note 1.

<sup>3</sup> 16 Stat. 255 (1870).

<sup>4</sup> *U.S. v. Achtner*, 144 F.(2d) 49, 52 (2d cir., 1944).

<sup>5</sup> *U.S. v. Frederick*, 50 F.Supp. 769 (1943).

<sup>6</sup> *Supra*, note 5.

<sup>7</sup> *U.S. v. Weber*, 71 F.Supp. 88 (1944).

<sup>8</sup> *Smiley v. U.S.*, 181 F.(2d) 515 (9th cir., 1950).

1) What acts must be shown to prove such a fraudulent misrepresentation as a United States citizen?

2) When do the courts consider as having a 'right to inquire' of another as to his citizenship?

In answer to the first problem as to what acts are necessary to constitute such a misrepresentation, a mere assertion of birth in the United States is not enough (as indicated in the case noted) because a person may be born here and still not be a United States citizen. Likewise an assertion of American birth coupled with a claim of being just a "citizen," without specifying what kind, was held not sufficient to sustain a conviction.<sup>9</sup> But an affirmative answer to the direct question, "Are you a United States citizen?" was held sufficient to convict in the leading case of *Smiley v. United States*.<sup>10</sup> In another case, analogous to the noted case in that it also involved an alien attempting to secure employment in a war plant which he knew employed only United States citizens, the court held the evidence, (defendant wrote 'yes' in answer to question on employment blank as to whether he was a United States citizen) sufficient to sustain a conviction.<sup>11</sup> As a general proposition, it can almost be said that while a claim of citizenship made in boast or jest is not a sufficient misrepresentation to sustain a conviction, any claim made seriously with an intent to deceive is.

In answer to the second question as to whom do the courts consider as having a right to inquire, that a police officer does is obvious.<sup>12</sup> But in answer to attacks that the misrepresentation must be made only to a government officer, the courts have held that there is no ground for such a weakening of the statute.<sup>13</sup> Others who have been held to have a right to inquire have been, election officials,<sup>14</sup> union officials,<sup>15</sup> and a private employer.<sup>16</sup> Language of the courts indicates that anyone with a legitimate purpose and not a mere busbybody, may be said to have a right to inquire.<sup>17</sup>

In light of the foregoing, in the case noted had there been a direct question asking defendant if he were a United States citizen, and had defendant answered "yes" knowing that he was not, but intending to deceive his employer in order to secure employment in a war plant, proof of these facts would have sustained a conviction, and made defendant liable for the rather severe penalties that have been meted out under the statute. This rather simple proof required for a conviction seems to render the statute a ready vehicle for despotic treatment of

<sup>9</sup> *Supra*, note 8.

<sup>10</sup> *Supra*, note 8.

<sup>11</sup> *U.S. v. Tandoric*, 152 F.(2d) 3 (7th cir., 1945).

<sup>12</sup> *Supra*, note 8.

<sup>13</sup> *Supra*, note 4.

<sup>14</sup> *Supra*, note 5.

<sup>15</sup> *U.S. v. Romberg*, 150 F.(2d) 116 (2d cir., 1945).

<sup>16</sup> *Supra*, note 11.

<sup>17</sup> *Supra*, note 8.

aliens. Judicious application on the part of the law enforcement officials, however, has kept arrests within bounds and the statute today remains as a strong deterrent to aliens seeking to masquerade as United States citizens.

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**Torts — Undertaking Establishments as a Nuisance —** Defendant, an undertaker, purchased three lots in the city of Fort Dodge, Iowa, and began excavation for a funeral home. Plaintiffs owned a large residence across the street from the defendant's property. The area contained some of the older and better residences of the city, but the business district had moved to within one block of the properties. Plaintiff sought an injunction restraining defendant from erecting the establishment on the grounds that it would have such a depressing effect upon the members of his family as to impair their comfort and enjoyment of their home and depreciate the value of their property.

*Held:* Injunction denied. Since the block in which the plaintiffs lived was not zoned and in a state of transition from residential use to commercial use, and was not restricted by ordinance to residential uses. The plaintiffs would not see caskets loaded or unloaded, or hear funeral services, and it did not clearly appear that a nuisance would necessarily result. *Dawson v. Laufersweiler*, 43 N.W. (2d) 726 (Iowa, 1950).

In considering the problem involved in the main case the courts distinguished between a funeral home being established in a residential district from one being established in a business district. In either case the undertaking business has generally been held not to be a nuisance *per se*.<sup>1</sup> However, when established in a residential area the courts require a higher degree of proper conduct of the business and do consider the depressing effect on the neighbors.

In an earlier Iowa case<sup>2</sup> the undertaking establishment was enjoined from continuing operation, but there the establishment was to be located in a purely residential district, and the driveway where the bodies were to be loaded and unloaded was only nineteen feet from that plaintiff's house, and the building was not to be soundproofed. In the principal case loading of bodies was to be done within the enclosure of the building on the far side of the establishment from the plaintiff's house, and the building was to be soundproofed. The Wisconsin Supreme Court<sup>3</sup> has held that an undertaking establishment would be enjoined as a nuisance when located in a purely residential district when it operated

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<sup>1</sup> 66 C.J.S. 820 (1950).

<sup>2</sup> *Bevington v. Otte*, 223 Iowa 509, 273 N.W. 98 (1937).

<sup>3</sup> *Cunningham v. Miller*, 178 Wis. 22, 189 N.W. 531 (1922).